



IT IS ORDERED as set forth below:

Date: December 29, 2008

A handwritten signature in black ink, reading "Paul W. Bonapfel".

**Paul W. Bonapfel
U.S. Bankruptcy Court Judge**

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:)	
)	CHAPTER 11
PALAZZO DI STONECREST, LLC,)	
)	CASE NO. 06-62584-pwb
Debtor.)	
_____)	JUDGE BONAPFEL
)	
RACT ENTERPRISES, INC.,)	
)	
Movant,)	
)	
v.)	CONTESTED MATTER
)	
PALAZZZO DI STONECREST, LLC.,)	
)	
Respondent.)	

ORDER

This matter is before the Court on a Motion to Reopen Bankruptcy Case (hereinafter the "Motion to Reopen") filed by R/A/C/T Enterprises, Inc. ("RACT"). After hearing from the

parties at a status conference held in this matter on November 18, 2008, the Court set an evidentiary hearing on the Motion to Reopen for December 11, 2008, beginning at 10:00 AM. The parties stipulate to the facts set forth herein and agree to the entry of this Order.

It appears that the Debtor filed a Motion for Order Authorizing the Sale of Real Property Free and Clear of Liens, Claims and Encumbrances ("Sale Motion") on March 6, 2007. The property was located at 6600 Hillandale Road, Lithonia, DeKalb County, Georgia. Pursuant to the terms of the sale proposed on the Sale Motion, the Debtor's real estate was to be sold by the Debtor to Top Flight Investment, LLC for a price of \$12,600,000. Matthew White was the managing member of the Debtor and a managing member of Top Flight Investment, LLC.

The Sale Motion was granted by an order entered on March 16, 2007 ("Sale Order"). Pursuant to the Sale Order, the real estate was to be sold free and clear of all liens, claims and encumbrances with such liens claims and encumbrances attaching to the sale proceeds and being paid in full their order of priority. The sale closed on April 13, 2007, but it was not closed in strict compliance with the Sale Order. Rather, a lien holder, RACT, was not fully paid all amounts claimed, while funds were disbursed to others holding lower priority claims.

RACT had performed site preparation work on the property ("Phase I Work") and began performing site excavation and drainage work on the property ("Phase II Work") concurrently with its performance of site preparation work. RACT had filed a Notice of Commencement of Work in September 2006 in the lien records of DeKalb County, Georgia. Later, upon completion of Phase I Work, RACT filed a claim of lien on December 4, 2006 in the DeKalb County lien records. RACT had not completed its Phase II Work, and no claim of lien had yet been filed for the work performed on Phase II.

RACT asserted claims in excess of the amount of undistributed sale proceeds. Following negotiations between the Debtor and RACT, RACT agreed to take less than full payment from the sale proceeds and executed a lien release (recorded in the DeKalb County lien records on April 19, 2007 at Lien Book 451, Page 465) canceling and releasing “any and all existing liens or claims of liens it has upon the...property.” However, the lien release was strictly limited to liens referenced in the release, all of which were for Phase I Work, and included an express reservation of rights as follows: “Such cancellation and release ... shall not be construed to waive any legal right or remedy, including filing additional liens against the property should existing or future debts or obligations be unpaid by the contractor.”

The Court therefore concludes that the parties-in-interest agreed to modify their rights under the Sale Order by permitting the distribution and use of the proceeds of the transaction in the manner effected at closing and thereafter and retaining any and all of RACT’s lien rights against the property with respect to Phase II Work.

For the reasons set forth above, the Motion to Reopen is denied.

END OF DOCUMENT

Prepared by and Consented and agreed to

/s/Jerry L. Sims

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